

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Marie Therese N. Fonchenla,

Plaintiff,

Case No. 19-cv-2774 (DWF/TNL)

v.

Walmart Store 2274, et al.,

Defendant.

**REPORT
AND RECOMMENDATION**

Plaintiff filed suit on October 24, 2019. (ECF No. 1). At the time, Plaintiff was proceeding unrepresented. Plaintiff amended her complaint a few months later. (ECF No. 8). Plaintiff alleges that she was harassed and discriminated against while working at a Walmart in Forest Lake.

Plaintiff has now obtained counsel and has moved to withdraw her operative complaint without prejudice and file a new complaint. (ECF No. 30). Plaintiff indicates that the Minnesota Department of Human Rights completed its investigation of Plaintiff's discrimination charge on May 21, 2020. Plaintiff seeks permission to file a new complaint on or before August 19, 2020.

The Court construes Plaintiff's motion as seeking voluntary dismissal of her operative complaint. Under Federal Rule of Civil Procedure 41(a)(1)(A)(i), a party may dismiss an action by filing a notice of dismissal before the opposing party answers or serves a motion for summary judgment. Defendants have not answered or moved for summary judgment here.

Given that Plaintiff has struggled to effect service in this matter and has just obtained counsel, the Court believes it appropriate to grant the motion, dismiss the operative complaint without prejudice, and provide Plaintiff the opportunity to file a new complaint. The Court will recommend as much. Plaintiff is cautioned, however, that should she fail to file a new complaint on or before August 19, 2020, the Court will recommend that final judgment be entered in the matter.

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. Plaintiff's Motion to Withdraw Amended Complaint Without Prejudice and Allow Plaintiff to File a New Complaint (ECF No. 30) be **GRANTED**;
2. The Amended Complaint (ECF No. 8) be **DISMISSED WITHOUT PREJUDICE**.
3. Plaintiff file a Second Amended Complaint **on or before August 19, 2020**; and
4. If Plaintiff fails to file a Second Amended Complaint **by August 19, 2020**, final judgment be entered disposing of this case.

Date: July 29, 2020

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).